

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13605 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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**J.K.CONSTRUCTION CO. THROUGH ADMINISTRATOR -
Petitioner(s)**

Versus

**DECD. KANCHANBEN REVASHANKER VYAS THROUGH HUSBAND & 9 -
Respondent(s)**

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Appearance :

MR AJ SHASTRI for Petitioner(s) : 1,
Rule served to respondent Nos.1,3, 7, 8 & 10.
MR JD AJMERA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/08/2006

ORAL JUDGMENT

1. Learned advocate for the petitioner seeks
permission to delete respondents Nos.4, 5, 6, 9

& 10. Permission granted.

2. Heard learned advocate Shri Shastri for the petitioner and Shri Ajmera for respondent No.2.

3. In the present petition, the petitioner has challenged the order dated 4.3.2004 passed by the Cooperative Tribunal No.972 of 2001 as also the order dated 24.1.2005 passed by the Tribunal in Review Application filed in the said proceedings.

4. The petitioner herein was plaintiff in Summary Suit No.259/01 filed against the respondents. The suit came to be allowed by the Board of Nominees by an order dated 21.9.01. The defendants were ordered to pay a sum of Rs.6,91,445/- to the petitioner with interest. Some of the defendants appealed against the order of the Board of Nominees before the Cooperative Tribunal. The Tribunal by its order dated 4.3.2004 allowed the appeal. The review Application filed by the petitioner also failed.

5. It may be noted that the Board of Nominees passed an order which was ex-parte. Again the Cooperative Tribunal also passed its order in

appeal on 4.3.2004 in absence of the learned advocate for the petitioner. It is the case of the petitioner that since there was delay in filing of the appeal, the Tribunal could not have proceeded further with the final hearing of the appeal without first condoning the delay. In the order dated 4.3.2004, the Tribunal did record that there is delay of 20 days, but considering the explanation given in the delay condonation application, the same is required to be condoned. The Tribunal simultaneously proceeded to allow the appeal as well. In the review application, however, the Tribunal observed that there was no delay. Apparently, there was no delay condonation application on record contrary to what was recorded by the Tribunal in its order dated 4.3.2004.

6. Considering all these aspects of the matter, I find that the proceedings need to be remanded to the court below for fresh consideration after participation from both sides. Ordinarily, I would have been inclined to remand the proceedings before the Tribunal for hearing of

the appeal afresh. However, learned advocate Shri JD Ajmera for respondent No.2 points out that the order passed by the Board of Nominees itself was an ex parte order. Therefore, I find it appropriate that the entire proceedings should be remanded to the Board of Nominees qua the respondents herein.

7. In the result, the petition is allowed in part. The proceedings are remanded to the Board of Nominees with the directions given hereinabove. The Board of Nominees may hear the question of jurisdiction as a preliminary issue since serious dispute about the maintainability of lavad proceedings is raised before this Court by the respondents. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)